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Committee of Experts on International Cooperation in Tax Matters

Report on the ninth session (21-25 October 2013)

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Note

Symbols of United Nations documents are composed of letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

[30 January 2014]

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Chapter I
Introduction

1. Pursuant to Economic and Social Council resolution 2004/69 and decision 2013/239, the ninth session of the Committee of Experts on International Cooperation in Tax Matters was held in Geneva from 21 to 25 October 2013.

2. The ninth session of the Committee was attended by 23 members of the Committee and 130 observers from Governments (representing 24 countries), intergovernmental organizations, the business sector, advisory entities, non-governmental organizations and academia.[1]

3. The provisional agenda and documentation for the ninth session as considered by the Committee (E/C.18/2013/1) was as follows:

1. Opening of the session by the representative of the Secretary-General.
2. Election of the Chair and other officers (closed meeting).
3. Consideration of the rules of procedure and other organizational issues (closed meeting).
4. Introductory remarks by the Chair of the Committee.
5. Adoption of the agenda and organization of work (E/C.18/2013/1 and E/C.18/2013/2).
6. Discussion of substantive issues related to international cooperation in tax matters:
   - (a) Issues related to the updating of the United Nations Model Tax Convention (E/C.18/2013/3):
     - (i) Article 4 (resident): application of treaty rules to hybrid entities (E/C.18/2013/CRP.1 and E/C.18/2012/CRP.7);
     - (ii) Article 5 (permanent establishment):
       - (a) Meaning of "connected projects" (E/C.18/2013/CRP.2);
       - (b) Whether a satellite in geostationary orbit could constitute a permanent establishment;
       - (c) Permanent establishment issues in international value added tax cases (E/C.18/2013/CRP.3);
     - (iii) Article 7 (business profits): "force of attraction" and the consideration and explanation of its operation;
     - (iv) Article 8 (shipping, inland waterways transport and air transport): meaning and coverage of the term "auxiliary activities" (E/C.18/2013/CRP.4);
     - (v) Article 9 (associated enterprises): update of its commentary (E/C.18/2013/4);

[1] Additional information on the participants in the session may be found at http://www.un.org/esa/ffd/tax/ninthsession/index.htm.

(vi) Article 12 (royalties): general consideration, including equipment-related issues;

(vii) Article 13 (capital gains): the practical implications of paragraph 4;

(viii) Article 23 (methods for the elimination of double taxation): conflicts of qualification and conflicts of interpretation in 2012 in the context of the discussion on climate change;

(ix) Article 26 (exchange of information);

(x) Various articles: taxation of services and the provision on taxation of fees for technical services (E/C.18/2013/CRP.5);

(xi) Various articles: United Nations Model Tax Convention and climate change mechanisms (E/C.18/2013/CRP.6);

(b) Other issues:

(i) Issues for the next update of the United Nations Practical Manual on Transfer Pricing for Developing Countries (E/C.18/2013/4 and E/C.18/2013/CRP.15);

(ii) Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries (E/C.18/2013/CRP.7-12);

(iii) Foreign direct investment issues and corporate taxation, including resource taxation issues for developing countries (E/C.18/2013/5 and E/C.18/2013/CRP.13);

(iv) Taxation of development projects;

(v) Capacity-building (E/C.18/2013/CRP.14).

7. Dates and provisional agenda for the tenth session of the Committee.

8. Adoption of the report of the Committee on its ninth session.

Chapter II
Organization of the session

Opening of the session, election of officers and adoption of the agenda

4. On 21 October 2013, the ninth session of the Committee was opened on behalf of the Secretary-General by Alexander Trepelkov, Director of the Financing for Development Office of the Department of Economic and Social Affairs, pending the election of a Chair.

5. Mr. Trepelkov thanked the Committee and its bureau for their dedication to the work of the United Nations in the area of international tax cooperation, particularly for the past four years, during which the previous membership had achieved impressive results, including the 2011 revision of the United Nations Model Double Taxation Convention between Developed and Developing Countries and the 2012 United Nations Practical Manual on Transfer Pricing for Developing Countries. Mr. Trepelkov expressed the hope that the new members would produce new updates of both before the end of their four-year term and pledged the support of the Secretariat for the Committee in its work.

6. Mr. Trepelkov told the participants about the United Nations intergovernmental process and substantive activities related to the work and mandate of the Committee. In its resolution 2013/24, the Economic and Social Council had taken note of the 2012 United Nations Practical Manual on Transfer Pricing for Developing Countries and had requested, among other things, that the Manual be updated as appropriate. The Council had also taken note with appreciation of the report of the Secretary-General on further progress in strengthening the work of the Committee (E/2013/67) and had requested the Secretary-General to regularly report on the progress made on that issue. Furthermore, the Council had decided to hold an annual meeting on international cooperation in tax matters and its contribution to the mobilization of domestic resources for development.

7. Mr. Trepelkov reminded participants that the 2013 special meeting of the Council, held on 29 May 2013 in New York, had been focused on international cooperation in tax matters. The meeting had seen the official launch of the transfer pricing manual, and the participants had discussed, among other topics, capacity development and the need for collaboration among various national and international stakeholders.

8. With regard to capacity development activities within the Financing for Development Office, Mr. Trepelkov informed the participants of the current work aimed at strengthening capacity in finance ministries and national tax authorities, including the "United Nations Course on Double Tax Treaties" and the practical workshop of the United Nations and the Organization for Economic Cooperation and Development (OECD) on the negotiation of double tax treaties. As part of its collaboration with the International Tax Compact, the Office had produced the United Nations Handbook on Selected Issues in Administration of Double Tax Treaties for Developing Countries. A global capacity development event on the administration of tax treaties was being planned for 2014. The Office was also undertaking a joint project with the Inter-American Centre of Tax Administrations on measuring and assessing tax transaction costs in order to reduce tax collection

costs. Mr. Trepelkov then called for a closed meeting of the Committee for the election of its new bureau.

9. At that meeting, Armando Lara Yaffar was elected as Chair of the Committee. Four Vice-Chairs were also elected: Tizhong Liao, as first Vice-Chair; Henry Louie, as second Vice-Chair; Mohammed Baina, as third Vice-Chair; and Liselott Kana, as fourth Vice-Chair. Carmel Peters was elected as Rapporteur for the session. All elections were by acclamation.

10. Mr. Lara Yaffar, as Chair, then submitted the provisional agenda (E/C.18/2013/1), to the Committee, and it was adopted, with the addition of special presentations and discussions on: (a) the OECD-Group of 20 (G20) base erosion and Profit-Shifting project; and (b) the results of research carried out by the International Bureau of Fiscal Documentation on the practical implementation of the United Nations Model Tax Convention between Developed and Developing Countries (the United Nations Model Convention). The summary below reflects discussions on all agenda items, but does not necessarily seek to follow the order of those discussions. It was also noted that members had before them two additional papers on the taxation of services (E/C.18/2013/CRP.16 and E/C.18/2013/CRP.17), an additional paper on the results of research carried out by the International Bureau for Fiscal Documentation on the practical implementation of the United Nations Model Convention (E/C.18/2013/CRP.18), a Secretariat report on the expert group meeting on extractive industries taxation held in May 2013 (E/C.18/2013/CRP.19) and two papers on the exchange of information (E/C.18/2013/CRP.20 and E/C.18/2013/CRP.21). A paper relating to permanent establishment issues in international value-added-tax cases (E/C.18/2013/CRP.3) and five papers on the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries (E/C.18/2013/CRP.8-12) had not ultimately been produced.

Chapter III
Discussion and conclusions on substantive issues related to international cooperation in tax matters

A. Article 4 (resident): application of treaty rules to hybrid entities

11. Victor Thuronyi presented his 2012 paper on coordination rules as a solution to tax arbitrage (E/C.18/2012/CRP.7). He noted that differences in various tax systems resulting in different treatments of entities or instruments could be exploited through "tax arbitrage", i.e., taking advantage of characterization differences to avoid paying tax. He noted that when one country accepted the treatment employed in another country as the determinant of its own treatment, such differences, and tax arbitrage, could be avoided. Some countries had already adopted "coordination rules" of this type. The problem could also be dealt with through treaty rules or anti-avoidance rules, but the most effective way to address it would be to adopt coordination rules. Treaty-based solutions tended to be complex and worked only for countries with extensive treaty networks. Anti-avoidance rules could be especially complex (specific rules) or less complex, but with greater uncertainties.

12. Mr. Louie considered it unrealistic to expect the necessary levels of agreement on coordination rules. He presented a paper on the approach of the United States of America to the application of income tax treaties to payments through hybrid entities (E/C.18/2013/CRP.1), which included examples in which benefits had been provided or denied. Mr. Louie explained that the principles of the United States approach were the principles of the OECD report *The Application of the OECD Model Tax Convention to Partnerships* that were aimed at avoiding unintended results. Mr. Louie indicated that if there was a lack of clear rules in the tax treaties, there might be certain unintended consequences of the application of a tax treaty to payments, such as: (a) double taxation resulting from the inappropriate denial of treaty benefits; (b) non-taxation resulting from the unintended granting of treaty benefits, such as to residents of third countries; or (c) the granting of an inappropriate level of treaty benefits (for example, the granting of the lower withholding rate on dividends paid to companies when such dividends were derived by an individual shareholder).

13. Since his paper was based on the application of provisions used by the United States in its tax treaties, and given that OECD had been working on this and equivalent provisions, Mr. Louie indicated that he would request access to some documentation from OECD Working Party 1. The representative of OECD, Jacques Sasseville, indicated that his organization would not object to Mr. Louie's distributing relevant Working Party 1 documents to the members of the Committee.

14. Mr. Louie offered to present a more detailed paper for consideration by the Committee at its tenth session, containing a proposal for modifications to the United Nations Model Convention and the commentary on article 4 that took into account the work done on this issue by OECD and others. The paper would also make references to other articles that might be affected by such changes.

B. Article 5 (permanent establishment)

1. Meaning of "connected projects"

15. At the eighth session, participants had discussed a paper by Claudine Devillet on the meaning of the reference to "connected projects" in article 5 (3) (b) (E/C.18/2012/CRP.5), and Ms. Devillet had been asked to update the paper to reflect that discussion. The updated paper (E/C.18/2013/CRP.2) was presented by Ms. Devillet to the ninth session in accordance with that mandate. She noted that much of the discussion at the eighth session had concerned the issue of physical presence in determining whether a permanent establishment existed. Strongly divergent views had been expressed on the extent to which physical presence and activities performed in the source State were required. She proposed clarifying, in paragraph 12 (1), that there was only one possible interpretation of article 5 (3) (b) — that physical presence was required. She considered that any other interpretation was unduly focused on the word "furnished" and did not properly reflect its context or the historical record as reflected in the 1979 Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries.

16. During further discussion on the point, a proposal was considered to clarify that physical presence was required and that countries not agreeing with that approach should include a special provision in their treaties. The proposal received wide support, but some Committee members considered that it did not take proper account of the wording of article 5 (3) (b), which required the continuance of the activities in the source State, but not the continuing presence of personnel there. After some discussion about the issues of, first, whether the "traditional" interpretation requiring continuing physical presence was the only acceptable interpretation of the current wording and, secondly, whether there was a need for alternatives to the traditional rule in the light of current challenges posed by the digital economy, the following policy approach was agreed upon:

> "The Committee agreed that the traditional interpretation of the current provision of article 5 (3) (b) of the United Nations Model requires physical presence of individuals, being an employee or personnel of the enterprise furnishing services, in the source State in order to constitute a permanent establishment in that State. However, some Committee members recognized that the development of the digital economy may create challenges for the application of that provision and that this should be reflected in the commentary. For that reason, the Committee decided that further efforts should be taken to address that issue in the commentary through an alternative provision or alternative provisions."

17. Ms. Devillet was asked to develop wording that encapsulated that policy for consideration at the next session. Pragya Saksena noted for the record that she did not agree with this interpretation because, in her view, the expression "furnishing of services ... through employees" in article 5 (3) (b) was distinguishable from the expression "performing his activities", as used in article 14 (1) (a).

18. With respect to paragraph 12.3 of the paper, the issue was which considerations were relevant in determining what constituted the same project, and whether that issue should be considered only from the perspective of the service provider or from either that perspective or the perspective of the consumer. It was agreed that the issue could be considered from either perspective, as relevant.

19. Ms. Devillet was thanked by Committee members for her valuable contribution to the work being done in this area.

2. Whether a satellite in geostationary orbit could constitute a permanent establishment

20. The secretariat noted that the background to this issue was the fact that in the 2010 version of the OECD Model Convention with Respect to Taxes on Income and on Capital (the OECD Model Convention), a paragraph 5.5 had been added to the commentary on article 5 of that document. It concluded that a satellite in geostationary orbit would not constitute a permanent establishment.

21. When the Committee, at its seventh session, had considered possible revisions to the commentary on article 5 of the United Nations Model Convention, it had not included a paragraph dealing with geostationary orbits, as it was to consider the matter later. Members now agreed that the matter was not a current priority for the Committee and that it would not be addressed at the ninth session or included in the agenda for the tenth session.

3. Permanent establishment issues in international value-added-tax cases

22. As requested by the Committee at its eighth session, Jürg Giraudi gave a presentation on the topic of permanent establishment issues in international value-added-tax cases. Mr. Giraudi was accompanied by two experts, Thomas Ecker and Karl-Heinz Haydl, who gave presentations on particular aspects of the issue.

23. Mr. Giraudi indicated that the value-added tax (VAT)/goods and services tax (GST) had been the fastest-growing tax over the past 50 years and would be increasingly important in the years to come. Effective work on the issue had been carried out by OECD and other international organizations, but VAT/GST needed attention from a global perspective. In that respect, a United Nations focus on VAT/GST was very important.

24. Mr. Ecker pointed out that from the governmental perspective, safeguarding VAT/GST revenues was a key concern. Governments needed to create effective tax administrations that prevented inefficiencies caused by, inter alia, double taxation. A VAT could be an efficient instrument for achieving that policy goal.

25. Mr. Giraudi suggested that the Committee set up a working group tasked with examining how to avoid double taxation on cross-border transactions and secure the collection of VAT. Committee members, while recognizing the importance of VAT issues for developing countries, were not of the view that the specific issues relating to permanent establishment were of particular relevance to those countries in this context. In the light of the need to closely prioritize its work, the Committee decided not to carry out further work on the issue at this stage. Mr. Giraudi and his colleagues were thanked for their work by the Committee.

C. Article 7 (business profits): "force of attraction" and the consideration and explanation of its operation

26. The secretariat explained that the issue of the "limited force of attraction rule" in article 7 had arisen out of the work carried out on tax treaty issues related to climate change, and reminded members of the relevant part of the note on tax treaty issues arising from the granting and trading of emissions permits and emissions

Credits under the United Nations Model Convention (E/C.18/2012/CRP.6). In a box following paragraph 91 of that document, it was noted that the rule, whose operation depended upon the existence of a similar rule in domestic law, was difficult to apply with certainty and was found only in a limited number of treaties.

27. The Committee considered that the issue was not a matter of current priority and would not be pursued at this stage.

D. Article 8 (shipping, inland waterways transport and air transport): meaning and coverage of the term "auxiliary activities"

28. The secretariat briefly introduced this agenda item, referring to a paper before the Committee (E/C.18/2013/CRP.4) and a letter from the International Air Transport Association on article 8, which was made available to participants. The Association and the International Chamber of Shipping were then given the opportunity to present their perspectives on the issues covered by the item. Both noted the importance of their respective industries to trade, the need for certainty and the benefits of ensuring, as far as possible, consistency with OECD approaches. It was agreed that the secretariat should maintain liaison with the Association and the Chamber in particular and update the paper for the tenth session. Enrico Martino noted the issue of the application of article 8 to cruise shipping as a possible item for discussion at that tenth session and offered to provide a paper on the subject. This was agreed upon by the Committee.

E. Revision of the commentary on article 9 of the United Nations Model Convention

F. Issues for the next update of the United Nations Practical Manual on Transfer Pricing for Developing Countries

29. The Committee discussed the agenda items of the revision of the commentary on article 9 (associated enterprises) of the United Nations Model Convention and of topics proposed for the next update of the United Nations Practical Manual on Transfer Pricing for Developing Countries together, in view of their close links.

30. The Coordinator of the former Subcommittee on Transfer Pricing — Practical Issues, Stig Sollund, introduced the items and presented a note by the Secretariat on transfer pricing issues for consideration by the Committee (E/C.18/2013/4) and a conference room paper on responses to the United Nations Practical Manual on Transfer Pricing for Developing Countries (E/C.18/2013/CRP.15).

31. Mr. Sollund noted that the Manual stood as a proud achievement of the Committee. At the same time, he reminded the Committee that during the finalization of the 2011 version of the United Nations Model Convention and once the Manual had been adopted, there had been consensus that the next membership of the Committee should review the commentary on article 9. The current version of the commentary established a strong connection to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. During the final discussion of the United Nations Model Convention at the Committee's seventh

session, in 2011, despite a general acknowledgement of the importance of the OECD Guidelines, some members had not been comfortable with the statement that a document issued by an organization of which their country was not a member ought to be followed by everyone, and had considered that it needed to be borne in mind that the document represented only guidelines. Accordingly, this part of the commentary would need to be revisited and revised. Mr. Sollund predicted that any necessary changes to the commentary would not be revolutionary and were unlikely to require modifications to the Manual.

32. Mr. Sollund noted important work carried out by OECD and G20 on base erosion and profit-shifting, which dealt with, inter alia, transfer pricing. He noted that the project sought to ensure that transfer pricing outcomes were in line with value creation. The current timetable of the project foresaw that transfer pricing would be discussed in September 2014 and September 2015, which would give the Subcommittee sufficient time to incorporate the outcomes into their update of the Manual. The work of the Subcommittee and the Committee would need to be informed by such developments.

33. In relation to the update of the Manual, Mr. Sollund noted that, as indicated by the former Subcommittee's work and in conference room papers now before the Committee, the treatment of transactions relating to intangibles would need to be discussed, together with intra-group services and management charges, which were of great importance for developing countries. The secretariat also noted the work done for the session on an annex that would provide advice on training and capacity development in this area. Such an annex would be a valuable addition, especially if combined with guidance on how to gain access to such resources.

34. Owing to the fact that the commentary was the framework and the basis for the update of the Manual, Mr. Sollund stressed that it was important to have it in place while the Subcommittee was working on the revision of the Manual. In addition to possible new chapters, the Subcommittee would invite comments on the Manual. In the initial drafting of the Manual, additional input had been submitted; however, given the limited time frame and the fact that the Manual did not represent international law, not all of that input could be fully drawn upon. Bearing in mind resourcing issues, the Subcommittee would seek to consider such comments in the update of the Manual. The Subcommittee invited feedback from users from developing countries in particular. The Subcommittee would also seek to add more examples, especially those reflecting the needs of developing countries.

35. In terms of the process, Mr. Sollund noted that the revision of the commentary was best treated as a matter to be decided upon by the members of the Subcommittee who were Committee members. In contrast, the update of the Manual should not be limited to members of the Committee, and the Subcommittee should welcome outside expertise in this area, as the former Subcommittee had. Mr. Sollund stressed the importance of face-to-face meetings for the process of drafting the commentary and the update of the Manual, as well as of the support provided by the secretariat.

36. In response to an enquiry by Mr. Louie as to what parts of the commentary on article 9 would be rewritten, Mr. Sollund clarified that while the mandate should not be limited to any particular part of the commentary, the key part was the third paragraph of section A, which referred to the OECD Guidelines. Mr. Sollund was

certain that the members of the Subcommittee would be able to find common ground in this regard.

37. Mr. Sollund noted that the Subcommittee would, as far as possible, seek to retain a common framework that was based on the arm's-length principle. Moreover, the Subcommittee sought to reach as much consensus as possible on the methodology for transfer pricing, while recognizing that some countries had different approaches, some of which were already recognized in chapter 10 of the Manual. While a mandate could not prescribe that the Subcommittee reach a consensus on all issues, Mr. Sollund was optimistic that despite a review of the commentary, a close connection between article 9 of the United Nations Model Convention and article 9 of the OECD Model Convention would remain.

38. In response to questions regarding the organization of work of the Committee, Mr. Sollund clarified that he planned to hold a meeting in the first half of 2014, tentatively scheduled for April. Accordingly, at the tenth session a draft commentary should be presented for approval and adoption. The draft text would be made available to the members of the Committee before the meeting to ensure that everyone was able to provide informed input. At the final session for the current membership of the Committee, in 2016, the update of the Manual would be presented for discussion and approval.

39. In response to comments about the importance of business inputs, Mr. Sollund stressed that while the Committee was mandated to focus on developing countries, input from business stakeholders was welcome and would be valuable. It should be noted that preliminary inputs to the existing Manual and inputs for possible additional chapters should be sent to the Subcommittee before the meeting to be held in April 2014. The inputs received before that meeting will be taken into account, and comments received will be made available to the drafters of the additional chapters.

40. The Committee mandated the Subcommittee on Article 9 (Associated Enterprises): Transfer Pricing to: (a) present a draft revised commentary on article 9 for discussion and decision at the tenth session of the Committee, in 2014; and (b) to work on the updating of the Manual, with reports on its progress to be made at each session and with the Subcommittee's final updated draft manual to be provided for discussion and adoption at the twelfth session, in 2016.[2]

G. Article 12 (royalties): general considerations, including equipment-related issues

41. Michael Lennard, the Secretary of the Committee, noted that this topic had been included in the catalogue of issues for consideration at the time when the 2011 update of the United Nations Model Convention was completed. In paragraph 47 of the report on the seventh session (E/2011/45), it had been noted that the consideration of article 12 was difficult for the purposes of the update, owing to the fundamental differences in approaches between the United Nations Model Convention and the OECD Model Convention with regard to the taxation of royalties. Nevertheless, the report had noted, article 12 had not been fully considered by the

[2] The full mandates of subcommittees and other subsidiary bodies are available at http://www.un.org/esa/ffd/tax/subcommittees.htm.

Committee, and it was agreed that it would be included in the catalogue of issues for future discussion.

42. The Committee recognized the royalties article as important for developing countries and decided that that issue should be the subject of a paper for consideration at its session in 2014. The Committee requested the secretariat to draft a paper covering specific relevant aspects, including equipment-related issues as well as issues that could have an impact on technical services provisions. The paper should take into account the work done by OECD on this topic. Since the Subcommittee on Tax Treatment of Services, coordinated by Ms. Kana, was taking the lead on fees with respect to technical services issues, the secretariat should closely coordinate with that Subcommittee.

H. Article 13 (capital gains): the practical implications of paragraph 4

43. In the absence of a conference room paper on this issue, the consideration of the matter was deferred until the next session. Ms. Saksena agreed to maintain liaison with members and produce a paper on country practices in relation to article 13 (4) for consideration at that session.

I. Article 23 (methods for the elimination of double taxation): conflicts of qualification and conflicts of interpretation

44. Ms. Devillet explained that this issue had arisen during the consideration of issues related to climate change, but had a potentially wider significance, especially as the Committee had not considered in depth the issues raised by the 1999 OECD report *The Application of the OECD Model Tax Convention to Partnerships* and the changes made to the commentary on article 23 of the OECD Model Convention in the light of that report.

45. In the absence of a paper specifically on this issue, the Committee requested Ms. Devillet and Ms. Saksena to work together to develop a paper for consideration at the tenth session of the Committee.

J. Article 26 (exchange of information)

46. Following the offers made by the observer from Mexico to address the issue of the exchange of information, which had been raised at the eighth session, two papers had been prepared by the Tax Administration Service of Mexico, on the automatic exchange of information (AEOI) and on a proposal to update article 26 of the United Nations Model Convention and the commentary thereon following the general pattern of updates agreed upon by OECD in 2012. The goals of the papers were to describe the developments in the area of the exchange of information and to help identify issues in that area for further comments and discussion during the next session of the Committee. The papers were presented by Mr. Lara Yaffar and Ricardo Carrasco, the observer from Mexico.

47. The presentation on AEOI addressed the following questions: (a) what is AEOI?; (b) how does AEOI work?; (c) who can engage in AEOI?; (d) why engage in AEOI?; (e) what developments are taking place in the area of AEOI?; and (f)

what role could the Committee play in relation to AEOI? Moreover, a proposal for the updating of the United Nations Model Convention and the commentary on article 26 was shared for initial consideration, taking into account recent developments and country practices as well as further elaboration on the interpretation of certain provisions of article 26 of the OECD Model Convention, as reflected in the 2012 update of that document.

48. The Committee thanked the speakers for their presentations. The participants recognized the issue as very important. Some members of the Committee requested more in-depth research on the confidentiality issues involved in the exchange of information as well as the capacity-building and technology involved. Others emphasized the resource and practical difficulties faced by developing countries in implementing an AEOI system. The members of the Committee expressed support for further work on the issues raised during the presentations, and a subcommittee was set up to address those issues.

49. The subcommittee would be coordinated by Mr. Lara Yaffar and was mandated[2] to: (a) monitor international developments in the area of the exchange of information (including OECD developments) and report to the tenth session with recommendations on any further work; and (b) provide any further input required to amend article 26 and the commentary thereon for the next update of the United Nations Model Convention.

K. Various articles: taxation of services and the provision on taxation of fees for technical services

50. Mr. Liao made a presentation on the taxation of cross-border trade in services, based on document E/C.18/2013/CRP.16. In his introduction, he pointed out that services as a sector represented a growing share of the global economy and of international trade, especially since 2005. Mr. Liao argued that, with the rapid changes and innovation in communications technologies, it had become commonplace for a company to deliver services for an extended period of time in countries other than its resident country without having an extended physical presence in those countries.

51. Mr. Liao presented various scenarios of service provision based on the General Agreement on Trade in Services (GATS) classification of services between members, before comparing the United Nations Model Convention and the OECD Model Convention in terms of the tax treatment of services. He presented four cases of service provision among GATS member States: (a) from the territory of one member State into the territory of any other member State; (b) in the territory of one member State to a service consumer of any other member State; (c) by a service supplier of one member State, through a commercial presence in the territory of any other member State; and (d) by a service supplier of one member State, through the presence of natural persons of a member State in the territory of any other member State.

52. Mr. Liao then compared the United Nations Model Convention and the OECD Model in terms of the allocation of taxing rights for various categories of services on the basis of the World Trade Organization Service Sectoral Classification List. He provided an analysis of the taxation of services under the United Nations Model Convention and gave a brief presentation on the taxation of income under the

Andean Pact, with respect to which the taxing right is attributed to the jurisdiction in which the income arises.

53. Mr. Liao highlighted what he regarded as the deficiencies of the existing rules for the taxation of services in the light of the current developments in communications technologies, particularly e-commerce and other services made possible by the Internet. He noted that: (a) a substantial amount of international trade consisted of services and intangible products; (b) communications were instantaneous; (c) capital was highly mobile internationally; (d) people were highly mobile; (e) it was easy for foreign enterprises to manipulate service permanent establishment thresholds; (f) it was difficult to identify and substantiate the nexus between commercial activity and the creation of a taxable presence in the source State; and (g) a physical presence might no longer be required for the conduct of some service-based business.

54. In conclusion, Mr. Liao put forward a number of alternatives to address the situation. First, he suggested a revision of the United Nations Model Convention to reflect the current developments in the global economy, particularly the four modes of cross-border trade in services, with special attention to the digital economy. He also suggested a new article on technical services and/or a new article on general services. Finally, he proposed a new article on services and, later, a revision of the United Nations Model Convention with a new article on general services.

55. Many speakers indicated that they found the paper to be very helpful, as it shed light on the difficulties of trying to apply treaty provisions that had been drafted with "bricks-and-mortar" economies in mind to current international trade and the global economy, in which services had become dominant. It was also stated that transactions were not always easy to categorize as involving goods or services, because the two were often bundled. Treaty models that could better respond to such business models and the global economy were called for by some speakers.

56. Ms. Kana, coordinator of the former Subcommittee on Tax Treatment of Services, then presented a draft proposal for a specific article on technical services as proposed in the paper drafted by Brian Arnold (E/C.18/2013/CRP.5). She also referred to the paper by the Secretariat on the history of the Committee's work on tax treatment of services (E/C.18/2013/CRP.17).

57. Ms. Kana pointed out that in his paper, Mr. Arnold had presented three options. In all three, technical services were defined as managerial, technical and consulting services. Under the first option, the source country was allowed to tax any payments for services, irrespective of whether the services had been rendered inside or outside the source country; there was no threshold for the imposition of source-country tax; and the source country was limited to taxing the payment for services on a gross basis at a rate to be determined between contracting States. Under the second option, the source country was entitled to tax income from technical services only if the services had been performed in the source country; and the source country was allowed to tax income from technical services on a gross basis, but the rate of taxation was limited. Under the third option, the source country was entitled to tax income from technical services only if the services had been performed in the source country for a minimum period of time; and the source country taxing income from technical services was required to do so on a net basis, but the rate of taxation was unlimited.

58. Ms. Kana explained that the purpose of a new article was to expand the source country's taxing right, but in the limited context of technical services. She proposed that the Committee agree on one of the three options, but that the other options be described in the commentary on the article so that a country that might have reservations regarding the option preferred by most other members would also have guidance.

59. In the discussions that followed, a number of participants and observers indicated that there was a need to understand the purpose of the new article on technical services, particularly the reason for expanding the source country's taxing rights. They argued that if the purpose was to make sure that payments for technical services were not used to shift profits from a source country and therefore reduce its tax base, the formulation of the new article would differ from a text whose policy object was to address situations in which services had been provided without a minimum physical presence.

60. It was also suggested by some members that there was a need to work on a clear definition of technical services. This was necessary in order to avoid drafting a text that would create confusion and lead to double taxation. In the case of the first option, for example, depending on the definition, a situation could arise in which a service provider in his home country would provide a service to a non-resident visitor and the service provider would unwittingly become liable for tax in the home country of the visitor.

61. Despite the issues of definition that would arise, several members pointed out that more and more countries, particularly in Latin America and Africa, were insisting on a fees-for-technical-services provision in their treaties and that the Committee could assist all stakeholders by clarifying the options and providing possible draft language.

62. After some discussion, the first option set out in Mr. Arnold's paper was chosen by the majority of Committee members to serve as the basis for the drafting of the new article. However, given the diversity of views and the specific cases that might arise, it was decided to first define clearly which technical services were to be covered by the article and, if necessary, to also list those that would not be covered. Ms. Kana assured the Committee that, in drafting the article on the basis of the first option, the concerns expressed and other comments received would be taken into account in order to produce an article that addressed most of those concerns and a commentary that took into account the other two options for countries that might wish to use them in their treaty negotiations.

63. The Committee established a new subcommittee to be coordinated by Ms. Kana and mandated to: (a) broadly address the taxation of services; and (b) address the particular issue of taxation of fees for technical services by presenting wording, including various options, for the text of the article on technical services, including text for the commentary thereon, at the tenth session.[2]

L. Various articles: United Nations Model Tax Convention and climate change mechanisms

64. During its eighth session, the Committee had considered a note on tax treaty issues arising from the granting and trading of emissions permits and emissions

credits under the United Nations Model Convention (E/C.18/2012/CRP.6). The Committee had requested the coordinator of the former Working Group on Tax Treaty Issues related to Climate Change Mechanisms, Ms. Devillet, to update the document to reflect the divergent views expressed by various members of the Committee at its eighth session and to present it at the ninth session.

65. Ms. Devillet had responded to that request, and noted that the document had been updated to take into consideration the comments made during the eighth session and was now submitted in draft form for approval by the Committee. She indicated that the only issue on which agreement had not been reached with regard to the paper concerned paragraph 3 of article 13, as follows:

> "113. Paragraph 3 of article 13 provides, for gains derived from the alienation of 'movable property pertaining to the operation' of ships and aircraft in international traffic, or of boats in inland waterways transport, the same rule as the rule applicable under paragraph 1 of article 8 (alternative A) to the profits derived from the operation of such ships, aircraft and boats. The term 'pertaining to' has an extended meaning (e.g., 'belonging to', 'having connection with, dependence on or relation to') which covers the situation where emissions permits/credits were acquired by the enterprise on the secondary market in order to fulfil obligations under an emissions trading programme relating to such operations. In such cases, the permits/credits would qualify as 'movable property pertaining to the operation of such ships, aircraft and boats' for the purposes of paragraph 3 of article 13 and the gains from their alienation by the operating enterprise would be taxable only in the Contracting State where the place of effective management of the enterprise is situated."

66. After discussing the proposed wording, the Committee accepted paragraph 113 of the draft paper as written, together with other minor changes to the document presented by Ms. Devillet. The Committee congratulated Ms. Devillet and the Working Group on a successful conclusion to their work.

M. Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries

67. During the session, the Committee discussed how to implement its mandate to keep under review and update as necessary the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries. The work of the former Subcommittee on that issue was recalled with thanks; it would be taken into account in further work on the Manual.

68. Wolfgang Lasars presented five practical papers on the negotiation of tax treaties as possible inputs to the Manual (contained in E/C.18/2013/CRP.7). At the outset, he recalled that at its eighth session, the Committee had requested the Secretariat to seek additional resources to advance the work to strengthen the capacity of developing countries to negotiate tax treaties. In that context, the Financing for Development Office and the International Tax Compact had worked on a joint project aimed at strengthening the capacities of ministries of finance and tax administrations in developing countries in the area of tax treaty negotiation and administration. One of the outputs of that project was the above-mentioned series of five papers on tax treaty negotiation for developing countries. Mr. Lasars briefly outlined the content of the five papers. During the ensuing discussion, several

speakers commented favourably on the usefulness of the papers. It was decided to use the papers as inputs to the Manual.

69. In addition, some participants suggested incorporating into the Manual the results of the recent research project carried out by the International Bureau for Fiscal Documentation on the practical implementation of the United Nations Model Convention.

70. The Committee formed a subcommittee, to be coordinated by Mr. Lasars and mandated to develop a new practical manual for the negotiation of bilateral tax treaties between developed and developing countries.[2] The objectives were to report to the Committee at its tenth session and to present a complete draft manual for adoption at the eleventh session, in 2015. The subcommittee would request the Secretariat to develop necessary inputs and provide necessary support within its resources.

N. Foreign direct investment issues and corporate taxation, including resource taxation issues for developing countries

71. Mr. Lennard introduced agenda item 6 (b) (iii), on foreign direct investment issues and corporate taxation, including resource taxation issues for developing countries. He recalled the history of the item and referred to the presentation made by Robin Oliver (a former member of the Committee) on broader issues related to foreign direct investment and on the taxation of economic rents. At the eighth session, the decision had been taken to form a working group addressing the taxation of natural resources. However, owing to the end of the previous membership term in June 2013, no such working group had been formed. The Secretariat had focused on taxation of the extractive industries, which had been the main area of discussion at the eighth session.

72. Charles Bajungu, Manager of International Taxation, for the Tanzania Revenue Authority, outlined the experience of the United Republic of Tanzania with extractive industries as a practical reflection of relevant issues. He highlighted reports from national and international organizations finding that the United Republic of Tanzania was losing public revenues as a result of tax malpractice, including transfer mispricing, hedging, tax incentive abuse and other tax-planning schemes, committed mainly by multinational enterprises through foreign direct investment. Moreover, he reported that according to the 2009 report of the Tanzania Investment Centre, 6 of the 20 leading countries investing in the United Republic of Tanzania, were so-called "tax haven jurisdictions". Revenue earned from the extractive industries had steadily increased owing to government measures, including the strengthening of the legal framework and effective tax audits and administration as well as international cooperation and assistance, but enhanced efforts remained necessary in view of the challenges facing the country. These included gaps in fiscal and contractual regimes, skills gaps, low tax compliance, harmful tax practices and high investment costs and technology. Other difficulties included the exchange of information on abuses, staff retention, ring-fencing and stabilization clauses.

73. Concerning the role of the stakeholders involved, Mr. Bajungu acknowledged and expressed appreciation for the efforts undertaken by national and international actors. However, more efforts aimed at the further strengthening of transparency and the design of effective legislation governing the extractive industries were

needed. Advocacy groups and international organizations had roles to play, especially in preventing resource-rich countries from falling into the "resource trap" of conflicts and cycles of poverty. He stressed that the United Nations, through the Committee, had a valuable role in enhancing and supporting international efforts regarding the taxation of the extractive industries. Mr. Bajungu then suggested as worthy of attention measures to enhance the legal and administrative framework, capacity-building and institutional and international cooperation, and stressed that the United Nations could enhance efforts in those areas. He noted that tax systems must be robust in the face of tax avoidance and evasion activities, but also must not provide a disincentive for beneficial investment. The establishment of a subcommittee was, to his mind, a crucial and indispensable part of such efforts.

74. Subsequently, Mr. Lennard presented a note by the Secretariat providing an overview of the topic (E/C.18/2013/5) as well as two conference room papers (E/C.18/2013/CRP.13 and E/C.18/2013/CRP.19), the first reflecting a more detailed consideration of the issues involved and the latter being a report on the expert group meeting on extractive industries taxation held in New York in May 2013. He stated that many issues were involved and, while it might appear that many of them would be too broad in scope for the Committee to address effectively, the United Nations had an important potential role to play, owing to its universal membership and convening power. From the perspective of the Secretariat, the Committee had an opportunity to create a "terrain map" that made sense of a difficult landscape and highlighted the connections between the various issues in this area. The breadth of those issues would pose a challenge, but not an impossible one, and they pointed to the opportunities for targeted contributions that could be made by the Committee, alongside the good work of others.

75. Mr. Lennard indicated that the Secretariat was suggesting the creation of a subcommittee mandated to provide practical advice, for example, in the form of short practice notes on policy and administration issues of the greatest practical significance for developing countries. An "overview note" on the linkages between them would also be valuable. The practice notes would be based on the overview note and could include checklists and give recognition to efforts by other organizations. The subcommittee would have to work closely with other subcommittees, in particular the Subcommittee on Article 9 (Associated Enterprises): Transfer Pricing. The Secretariat stood ready, within its resources, to help make a focused, value-added contribution.

76. The Committee decided to establish a subcommittee on extractive industries taxation issues for developing countries, to be coordinated by Eric Mensah and mandated to consider, report on and propose draft guidance on extractive industries taxation issues for developing countries.[2] The subcommittee would seek to engage with other organizations active in the field and would report on its work to the Committee at each session.

O. Taxation of development projects

77. Mr. Sasseville of the OECD secretariat introduced the issue of the taxation of development projects, which had often been discussed in past years. He explained that while donors sought a tax exemption for projects that they financed in

developing countries, such an exemption created policy and administrative difficulties for tax administrations in the developing countries.

78. These issues had been taken into account in a set of draft guidelines that could be used in consultations with all stakeholders, including donor agencies. The draft guidelines on the tax treatment of donor-financed projects prepared by Mr. Sasseville and Mr. Thuronyi as members of the steering group of the International Tax Dialogue (E/C.18/2007/CRP.12) had been among the papers considered by the Committee at its third session.

79. The Committee noted that this remained an important issue, as the effect of large projects falling outside the tax system was especially significant for developing countries. Some members of the Committee and country observers expressed interest in further work on the issue. It was noted that it might be a good subject for an expert group meeting if resources permitted. Both Mr. Sasseville and Mr. Thuronyi were thanked for their work on the issue.

P. Capacity-building

80. Dominika Halka and Harry Tonino of the Financing for Development Office provided an update on progress made in developing and implementing the United Nations capacity development programme on international tax cooperation. They reported that the mandate for the programme had been reiterated and strengthened over the past year by the Economic and Social Council in its resolution 2013/24, in which it had requested the Office to continue its work in this area and to further develop its activities. Ms. Halka and Mr. Tonino then described progress made in three major areas of the programme: (a) the application and negotiation of double tax treaties drawing on the United Nations Model Convention; (b) practical issues in transfer pricing for developing countries; and (c) tax administration (see E/C.18/2013/CRP.14).

81. The speakers emphasized that to a large extent, this programme of capacity development supported and drew upon the outputs of the Committee. The objective was to disseminate and operationalize such outputs as the 2011 version of the United Nations Model Convention and the 2012 United Nations Practical Manual on Transfer Pricing for Developing Countries as capacity development tools for the benefit of developing countries. In other cases, activities carried out in the context of the programme would produce inputs to the Committee's work (see E/C.18/2013/CRP.7).

82. During the ensuing discussion, several Committee members expressed their support for and interest in activities carried out under the programme. They also called for closer cooperation with the regional and subregional organizations of tax administrations, especially in Africa and the Asia-Pacific region. In addition, a request was made for the extension of the capacity development activities to the Francophone developing countries, including through the translation of relevant capacity development tools into French.

83. Miguel Pecho of the Inter-American Centre of Tax Administrations secretariat presented the results of a joint project of the Financing for Development Office and the Centre focused on strengthening the capacity of the national tax administrations of developing countries in Latin America to reduce tax transaction costs and thereby

maximize tax revenues. As part of the project, a methodology had been developed for measuring tax transaction costs, comprising costs of compliance and administrative costs, in small and medium-sized enterprises. The methodology had been implemented in two pilot countries, Costa Rica and Uruguay. Moreover, Mr. Pecho reported that the tax authority of Brazil was implementing the methodology developed under the project at its own expense and with the support of the Centre. Additional requests to implement the methodology had been received from Ecuador, Guatemala and Panama.

84. The Committee decided to set up an advisory group on capacity development mandated to make recommendations on capacity-building and the provision of technical assistance to developing countries in the area of international cooperation in tax matters.[2]

Q. Results of research carried out by the International Bureau of Fiscal Documentation on the practical implementation of the United Nations Model Convention

85. Wim Wijnen and Jan de Goede of the International Bureau of Fiscal Documentation presented a paper entitled "The United Nations Model in Practice, 1997-2013" (E/C.18/2013/CRP.18), prepared by the Bureau to assess the impact of the United Nations Model Convention on current tax treaty practice. The research reflected therein represented a continuation of the research carried out by the International Bureau of Fiscal Documentation in 1997 and 2011 at the request of the Committee and its predecessor body. The note summarized comprehensive research on the use of 30 provisions of the United Nations Model Convention in more than 1,800 tax treaties and sought to analyse trends of greater or lesser use of United Nations treaty provisions in treaties between pairs of non-OECD countries, between non-OECD and OECD countries and between pairs of OECD countries.

86. The authors remarked that the United Nations commentary could play an important role in support of the specific United Nations provisions. The promotional value of elaborate and unambiguous commentaries on the various United Nations provisions could not be overstated. However, the real impact of the United Nations Model Convention on tax treaties could not be measured simply on the basis of figures concerning the presence of United Nations provisions in tax treaties. Tax treaties were the result of negotiations on an entire set of provisions, in respect of which compromises were made on the basis of trade-offs, especially between provisions included in the current research and other treaty provisions, such as withholding taxes on dividends, interest and royalties, the inclusion of general or specific anti-abuse provisions or other provisions not included in this research. Consequently, the real importance of the United Nations Model Convention for treaty practice was not readily apparent from the results of this research.

87. The Committee discussed the paper, and the point was made that it was useful to reflect on whether particular provisions continued to meet the needs of developing countries, although their use could be due in part to the lack of promulgation of a particular provision or the unwillingness of other countries to accept a desired provision. The Chair and the Secretariat thanked the speakers and the International Bureau of Fiscal Documentation for their contributions to the

important discussion on the practical implementation of the United Nations Model Convention.

R. Base erosion and profit-shifting

88. Pascal Saint-Amans, Director of the Centre for Tax Policy and Administration of OECD, briefed the Committee on the base erosion and profit-shifting project. He recalled that the topic of base erosion and profit-shifting had been addressed by the Committee over many years, notwithstanding the fact that it had recently become a central issue at the political level of G20. Mr. Saint-Amans considered that this was due to the fact that tremendous progress in eliminating double taxation over time had resulted in part in the creation of double non-taxation. The international tax system was bound to have some inconsistencies resulting in double non-taxation because of different treatment of the same item of income in different jurisdictions, reflecting their sovereign choices. As a result of the financial crisis of a few years previous, this double non-taxation had become even less acceptable to countries as they were struggling to generate more tax revenue.

89. Mr. Saint-Amans presented the history and background of the work and the action plan relating to the base erosion and profit-shifting project and noted that eight G20 countries that were not members of OECD participated on an equal footing with OECD member countries. There were also a number of mechanisms for the participation of non-OECD and/or non-G20 countries, including OECD global forums on tax treaties and transfer pricing. In addition, the plan called upon the United Nations to play a role in providing developing country perspectives on the issues addressed under the project. The OECD Task Force on Tax and Development would establish a subgroup dedicated to the project, which would provide opportunities to receive inputs from civil society and the business sector.

90. The Committee's role in facilitating the input of non-OECD and/or non-G20 countries into the base erosion and profit-shifting project in response to the recognition of a United Nations role included in the action plan was raised by several speakers. Given that the Committee was the only United Nations body dealing with these tax cooperation issues, it needed to decide how to respond to this aspect of its work. Furthermore, it was recalled that all United Nations bodies in the economic and social area had been requested to provide input to the post-2015 global United Nations development agenda. The Committee could also provide important inputs to the current deliberations at the United Nations on the formulation of that agenda.

91. Several speakers pointed out that a number of issues of great importance to developing countries were not a focus of the action plan. Furthermore, there were some issues on which many developing countries might take a different view from those of many OECD countries. The fact that the Committee had been addressing base erosion and profit-shifting issues generally and would continue to do so in accordance with its mandate was also noted.

92. In the light of these discussions and the need to pursue its own base erosion and profit-shifting work, while constructively engaging with the work of OECD and G20, the Committee decided to convene a subcommittee on base erosion and profit-shifting issues for developing countries, to be coordinated by Carmel Peters and mandated to draw upon its own experience and engage with other relevant bodies,

particularly OECD, with a view to monitoring developments on base erosion and profit-shifting issues and communicating on those issues with officials in developing countries (especially the less developed) directly and through regional and interregional organizations. The subcommittee would report on its activities at each session of the Committee.[2]

S. Other matters

Contributions noted

93. The Committee noted with regret the passing of Michael McIntyre of Wayne State University and Huub Bierlaagh, formerly Chief Tax Lawyer at the International Bureau of Fiscal Documentation and its observer at Committee meetings. The Committee expressed its gratitude for their commitment and contribution to its work.

Dates for the submission of papers

94. The Committee decided that papers that required Committee decisions should be ready six weeks before the session in question (i.e., 15 September 2014 for the tenth session) and, at the very latest, should be available four weeks before the start of the session (i.e., 29 September 2014 for the tenth session).

95. With respect to the agenda and organization-of-work documents, the Secretariat informed the Committee that both would be ready in provisional form at the beginning of August, as they must be ready for translation at that time. However, the organization of work was generally subject to change as the Secretariat sought to accommodate non-Committee presenters and experts, who might be available only at certain times. The Committee agreed to allow some flexibility to the Secretariat in scheduling based on the availability of key presenters and experts.

Participation of members of the press and observers

96. With a view to ensuring that experts could engage in open and free discussion without concern that they might be misquoted or misinterpreted by observers in their reports (including "blogs") or in the press, it was requested that:

(a) The Secretariat create a new participation form that must be filled out by any prospective participant, which would include a clause making clear that participation was conditioned upon the participant's agreement that any reports quoting and or reporting views of members of the Committee or observers should not identify (explicitly or implicitly) speakers or purport to express country positions. Non-compliance could result in the denial of participation in the rest of a session or in future sessions. This requirement would not apply to country or intergovernmental organization observers;

(b) Registration for participants close early enough to allow the Secretariat to circulate the list of observers to Committee members to ensure that the members of the Committee had no objections.

97. The Committee acknowledged the importance of transparency and of wide participation in its work, and reaffirmed the value of keeping meetings during the session open to all registrants, with the exception of special discussions, for which

closed meetings for only Committee members might sometimes be necessary. In the *Journal of the United Nations*, it would be announced that the sessions of the Committee were not open to the public, but that access to meetings might be granted upon registration, in conformity with the conditions imposed.

Chapter IV
Dates and agenda for the tenth session of the Committee

98. The Committee decided to hold its tenth session in Geneva from 27 to 31 October 2014.

99. The Committee also decided upon a draft agenda for its tenth session. It was decided to add two more agenda items. An item on cooperative compliance and corporate governance in tax matters would address what is meant by "cooperative compliance" as well as challenges and opportunities to engage with taxpayers, especially for developing countries (with a paper on the topic to be prepared by Andrew Dawson, An Theeuwes (a business observer) and Aart Roelofsen, the observer for the Netherlands. Experience relating to the Code of Practice on Taxation for Banks would be addressed as part of the item, together with issues relating to taxpaying compliance obligations and "ethics" of the corporate sector (with a paper to be prepared by Ms. Kana). The other new agenda item would be focused on tax issues relating to the international trade in goods, particularly in relation to customs obligations. Mr. Martino would prepare a paper for consideration at the tenth session.

100. The provisional agenda for the tenth session will therefore be as follows. The order of the substantive issues reflects the order of articles addressed in the discussions, with more general discussions following. The order of proceedings will be provisionally set by the Committee prior to the annual session:

1. Opening of the session by the Chair of the Committee.
2. Adoption of the agenda and organization of work.
3. Discussion of substantive issues related to international cooperation in tax matters:
    - (a) Issues related to update of the United Nations Model Tax Convention:
        - (i) Article 4 (resident): application of treaty rules to hybrid entities;
        - (ii) Article 5 (permanent establishment):
            - (a) The meaning of "connected projects";
            - (b) Physical presence issue;
        - (iii) Article 8 (shipping, inland waterways transport and air transport):
            - (a) The meaning and coverage of the term "auxiliary activities";
            - (b) The application of the article to cruise shipping;
        - (iv) Article 9 (associated enterprises): update of its commentary and transfer pricing issues;
        - (v) Base erosion and profit-shifting;

(vi) Article 12 (royalties): general considerations, including equipment-related issues;

(vii) Article 13 (capital gains): the practical implications of paragraph 4;

(viii) Article 23 (methods for the elimination of double taxation): conflicts of qualification and conflicts of interpretation;

(ix) Article 26 (exchange of information);

(x) Taxation of services:

(a) Taxation of services — general discussion;

(b) Article on technical services;

(b) Other issues:

(i) Issues for the next update of the United Nations Practical Manual on Transfer Pricing for Developing Countries;

(ii) Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries;

(iii) Taxation of the extractive industries;

(iv) Taxation of development projects;

(v) Capacity-building;

(vi) Cooperative compliance and corporate governance in tax matters;

(vii) International trade in goods — tax issues.

4. Dates and provisional agenda for the eleventh session of the Committee.

5. Adoption of the report of the Committee on its tenth session.

Chapter V
Adoption of the report of the Committee on its ninth session

101. The Committee approved and adopted the present report for submission to the Economic and Social Council, with the text to be settled after the session.

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